

FCC MAIL SECTION

Federal Communications Commission

DA 97-1605

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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.606(b))	MM Docket No. 97-170
Table of Allotments,)	RM-8980
TV Broadcast Stations.)	
(San Bernardino and Long Beach, California))	

NOTICE OF PROPOSED RULE MAKING

Adopted: July 23, 1997

Released: August 1, 1997

Comment Date: September 22, 1997

Reply Comment Date: October 7, 1997

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed on behalf of KSLs, Inc. ("petitioner"), licensee of Station KSCI(TV), Channel 18, San Bernardino, California, seeking the reallocation of Channel 18 from San Bernardino to Long Beach, California, as that community's first local television transmission service, and modification of its authorization accordingly.

2. San Bernardino (population 164,164)¹ is located in San Bernardino County (population 1,418,380). Long Beach (population 429,433) in Los Angeles County (population 8,863,164), is located approximately 28 kilometers (18 miles) southeast of Los Angeles.

3. Petitioner seeks to invoke the provisions of Section 1.420(i) of the Commission's Rules which permits the modification of a station's authorization to specify a new community of license without affording other interested parties to file competing expressions of interest. See *Modification of FM and TV Authorizations to Specify a New Community of License* ("Change of Community R&O"), 4 FCC Rcd 4870 (1989), *recon. granted in part* "Change of Community MO&O", 5 FCC Rcd 7094 (1990)). In support of its proposal, petitioner states that the requested reallocation of Channel 18 to Long Beach is mutually exclusive with its existing authorization at San Bernardino as it does not intend to relocate from its current site.

4. In further support of its proposal, petitioner states that adoption of its proposal would result in a preferential arrangement of allotments (*Change of Community R&O* at 4873), as it would provide a first local television transmission facility to the significantly larger community

¹Population figures reported herein were taken from the 1990 U.S. Census.

of Long Beach,² while retaining two television stations licensed to San Bernardino.³

5. Although the Commission has imposed a freeze on the TV Table of Allotments in certain metropolitan areas, including Los Angeles, the freeze is not applicable to changes requested by existing stations. See *Advanced Television Systems and Their Impact on the Existing Television Broadcast Service*, Order, RM-5811, 52 Fed. Reg. 28,346, July 29, 1987. Additionally, petitioner notes that in the *Sixth Further Notice of Proposed Rule Making* in MM Docket No. 87-268, 11 FCC Rcd 10968 (1996), 61 FR 43209, August 21, 1996, the Commission advised that while petitions for rule making filed after July 25, 1996, proposing to amend the TV Table of Allotments to add an allotment for a new NTSC station would no longer be accepted, proposals to change a station's community of license may continue to be filed.

6. Based upon the information presented, we believe the proposal warrants consideration since the reallocation of Channel 18 could provide Long Beach with its first local television transmission facility without depriving San Bernardino of local television service. We recognize that this proposal involves a move from the Riverside-San Bernardino Urbanized Area to the Los Angeles Urbanized Area. However, we do not view this proposal as a migration to the Los Angeles Urbanized Area, as Station KSCI(TV) currently provides entire city grade service to Long Beach, as well as to a majority of the urbanized area from its existing site. According to a staff engineering analysis, the proposed allotment of Channel 18 to Long Beach, designating the presently authorized site of Station KSCI(TV), will provide coverage of the Los Angeles Urbanized Area, as follows: city grade contour (80 dBu) - 80%; Grade A contour (74 dBu) - 97%; Grade B contour (64 dBu) - 100%. Under the circumstances, we do not believe that the proponent should be required to submit a Tuck analysis to demonstrate that Long Beach is sufficiently independent of the Los Angeles Urbanized Area to merit a first local television service preference.⁴ See Boulder and Lafayette, Colorado, 11 FCC Rcd 3632 (1996); and East Los Angeles, et al., California, 10 FCC Rcd 2864 (1995). Our determination is buttressed by the fact that Long Beach is an expansive community containing thousands of business

²The television allotment priorities are: (1) provide at least one television service to all parts of the United States; (2) provide each community with at least one television broadcast station; (3) provide a choice of at least two television services to all parts of the United States; (4) provide each community with at least two television broadcast stations; and (5) assign any remaining channels to communities based on population, geographic location, and the number of television services available to the community from stations located in other communities. See *Sixth Report and Order on Television Allocations*, 41 FCC 148, 167 (1952).

³Petitioner also notes that as Station KSCI(TV) presently offers Asian programming service to a minority percentage comprising 4.0% of San Bernardino's population, the percentage thereof increases to 13.6% in Long Beach. Therefore, petitioner asserts that the proposed reallocation would also provide a significant Asian community in Long Beach with programming service responsive to its needs.

⁴See Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990); and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988).

establishments.⁵ Moreover, as Station KSCI(TV) does not seek to relocate its transmitter site, the reallocation proposal will not result in any gain or loss areas. As the petitioner's proposal is consistent with the provisions of Section 1.420(i) of the Commission's Rules, we shall propose to modify the license of KSLs, Inc. for Station KSCI(TV) (File No. BLCT-2579) to specify its operation on Channel 18 at Long Beach, California, without entertaining other expressions of interest.

7. A staff engineering study reveals that Channel 18 can be allotted to Long Beach, California, in conformity with the minimum distance separation requirements of Sections 73.610 and 73.698 of the Commission's Rules at the petitioner's currently authorized transmitter site, located 64.2 kilometers (39.9 miles) northeast of Long Beach at coordinates 34-11-15 and 117-41-54. Additionally, although the Commission has imposed a temporary freeze on new television allotments in certain metropolitan areas, the proposed reallocation of Channel 18 from San Bernardino to Long Beach, California, is not affected thereby. *See Notice of Inquiry and Order, supra.* Although this proposal falls under the exception to the mandate of the *Sixth Further Notice, supra*, suspending the filing of proposals to amend the TV Table of Allotments to add an allotment for a new NTSC station filed after the cut-off date established in that proceeding,⁶ the Commission stated therein that while it will continue to permit the filing of proposals to change a station's community of license, any resultant changes to the table that include a modification of a station's authorization will be conditioned on the outcome of the DTV rule making proceeding. *See Sixth Further Notice* at paragraph 61. The instant rule making request to reallocate Channel 18 from San Bernardino to Long Beach, California, does not impact on the present draft DTV allotment table.

8. Long Beach is located within 320 kilometers (199 miles) of the Mexican border. However, concurrence of the Mexican government to this proposal is not required since Station KSCI(TV) is not seeking a channel substitution nor relocating its transmitter site. Therefore, in the event this proposal is granted, the Mexican government will be advised of the change to the TV Table of Allotments at the conclusion of this proceeding.

9. In view of the above, we shall solicit comments on the proposed amendment to the TV Table of Allotments, Section 73.606(b) of the Commission's Rules, with respect to the communities listed below, as follows:

⁵See <http://www.bigbook.com/search.cgi>.

⁶In this regard the Commission expressed its concern that "freezing modifications to existing NTSC stations could pose hardships for broadcasters." Further, the Commission noted that "in many cases it may be possible to permit modification of existing stations without affecting the DTV Table."

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
San Bernardino, California	18-, *24-, 30	*24-, 30
Long Beach, California	--	18-

10. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

11. Interested parties may file comments on or before September 22, 1997, and reply comments on or before October 7, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner's counsel, as follows:

Kenneth E. Satten, Esq.
Christine V. Simpson, Esq.
Wilkinson, Barker, Knauer & Quinn
1735 New York Avenue, N.W.
Washington, D.C. 20006

12. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the TV Table of Allotments, Section 73.606(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.606(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

13. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement.

Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the TV Table of Allotments, Section 73.606(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.